



July 24, 2001

Ms. Marva M. Gay
Senior Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2001-3199

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149778.

The Harris County Hospital District (the "district") received a request for all correspondence that concern the requestor's participation as a member of the clinical staff / teaching facility at Ben Taub General Hospital. In particular, the requestor seeks copies of all correspondence created by Dr. Kenneth Mattox or maintained in the office of the Chief of Staff of the Ben Taub General Hospital. You state that the district has provided the requestor with the information marked as Exhibit B. Exhibit B contains the General Surgery/SICU/ Thoracic Staff Coverage schedules for November 2000 through March 2001, a copy of David L. Dawson's Application for Appointment, and the district's Medical Board Report, in which the district reviewed fifty-three reappointments, dated August 2, 2000. You further state that Dr. Mattox recalled one or two emails that may have referenced the requestor, but that after searching his emails, found that no such emails existed in his files or computer. You indicate that the district has notified its Information Services Department in an attempt to recover any emails that may have been deleted from Dr. Mattox's computer. The Public Information Act (the "Act") compels disclosure of public information that is in existence, but it does not require a government entity to prepare or assemble new information in response to a request. *See* Gov't Code § 552.002 (defining "public information" as that "collected, assembled, or maintained" by a government body); *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 268 (Tex. Civ. App. – San Antonio 1978, writ diss'd) (ruling that a government agency could not be required to make copies of documents no longer in its possession). You claim that the requested information is excepted from disclosure under

section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. We have considered the exception you claim and reviewed the submitted information.

We initially note that the district failed to comply with section 552.301 of the Government Code in requesting this decision. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. Gov't Code § 552.301(e)(1)(B). You did not, however, submit to this office a copy of the written request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has long held that a compelling reason to withhold information exists, sufficient to overcome the section 552.302 presumption of openness, where the information at issue is made confidential by another source of law or affects third party interests. *See* Open Records Decision Nos. 26 (1974), 150 (1977). You contend the remainder of the requested information is information of the district's Medical Credentials Committee, and therefore excepted from required disclosure under section 552.101 in conjunction with section 161.032 of the Health and Safety Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 161.032 of the Health and Safety Code makes confidential the "records and proceedings of a medical committee." Under section 161.031(a) of the Health and Safety Code, a "medical committee" includes any committee of a hospital, medical organization, university medical school or health science center, or extended care facility. It includes an ad hoc committee appointed to conduct a specific investigation as well as a committee established under the bylaws or rules of the organization. Health & Safety Code § 161.031(b). While the records and proceedings of a medical committee are confidential, *id.* § 161.032(a), the confidentiality does not extend to "records made or maintained in the regular course of business by a hospital." *Id.* § 161.032(c); Open Records Decision No. 591 (1991). Documents generated by a committee in order to conduct open and thorough review, as well as documents prepared by or at the direction of the committee for committee purposes, are confidential. *Memorial Hosp.-The Woodlands v. McCown*, 927 S.W.2d 1, 9 (Tex. 1996); *Barnes v. Whittington*, 751 S.W.2d 493, 496 (Tex. 1988); *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 648 (Tex. 1985).

You indicate that the Medical Credentials Committee is a medical committee under the Medical Staff Bylaws of the district.¹ In addition, you state the records of the Medical Credentials Committee are used by the Medical Credentials Committee and the members of the Medical Credentials Committee only in the exercise of the proper functions of the Medical Credentials Committee and that the records, information, and reports of the district's Medical Credentials Committee are confidential and are kept apart from the district's patient and financial records. Only authorized representatives of the district's Medical Credentials Committee have access to the records, information, and reports of that committee. Based on your representations and our review of Exhibit C, we agree that Exhibit C consists of records or proceedings of a medical committee made confidential by section 161.032 of the Health and Safety Code. *Memorial Hosp.-The Woodlands*, 927 S.W.2d at 8-11 (records maintained by medical committee in connection with credentialing process are confidential under section 161.032). Therefore, you must withhold Exhibit C under section 161.032.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

¹ Article XI, Section 7, reads in pertinent part:

a. Composition: The Credentials Committee shall consist of at least six (6) members of the Active Medical Staff appointed by the Chairman of the Medical Board upon the recommendations of the Chiefs of Staff of Ben Taub General and Quentin Mease Community Hospitals and Lyndon B. Johnson General Hospital and a representative of the medical staff office and administration on a basis that will insure equal representation of the major clinical specialists, the hospital based specialties, and the medical staff at large from each facility. The chairman shall be appointed by the Chairman of the Medical Board.

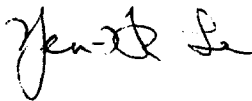
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 149778

Enc. Submitted documents

cc: Dr. David L. Dawson, M.D.
4014 North Water Iris
Houston, Texas 77059-3012
(w/o enclosures)